UCMJ JURISDICTION OVER GUARD & RESERVE

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OVERVIEW

- LEGAL STRUCTURE OF THE AIR RESERVE COMPONENTS
- JURISDICTION OVER GUARDSMEN & RESERVISTS
- PROBLEMS WITH TECHNICIANS IN CIVILIAN STATUS

THE LEGAL STRUCTURE OF THE UNITED STATES AIR FORCE

- US AIR FORCE
  - THE REGULAR AIR FORCE
  - THE AIR FORCE RESERVE
  - THE AIR NATIONAL GUARD OF THE UNITED STATES (ANGUS)
  - THE AIR NATIONAL GUARD *WHILE IN THE SERVICE OF* THE UNITED STATES
- DIDN'T WE JUST COUNT THE ANG TWICE?

WHAT'S THE DIFFERENCE BETWEEN THE ANG AND THE ANGUS?

- AIR NATIONAL GUARD PERSONNEL ARE MEMBERS OF "TWO OVERLAPPING BUT LEGALLY DISTINCT ORGANIZATIONS"
  - PERPICH V. US, 493 US 334 (1990)
  - NOT DIFFERENT ROLES FOR A SINGLE ORGANIZATION
- ANG: THE STATE (OR FEDERAL) MILITIA
- ANGUS: THE "OTHER" AF RESERVE COMPONENT
- ANG TRAINS
- ANGUS FIGHTS

THE ANG

- THE AIR ARM OF THE STATE MILITIA
  - PURELY STATE ORGANIZATION
    - DISASTER RELIEF, REBELLION, ETC.
  - TRAINED IAW THE DISCIPLINE PROVIDED BY CONGRESS (THE MILITIA CLAUSE)
  - NO EXTRATERRITORIAL STATE USE (UNLESS APPROVED BY CONGRESS)
- CAN BE CALLED INTO FEDERAL SERVICE AS A MILITIA FORCE
  - ENFORCE FEDERAL LAW, SUPPRESS INSURRECTION, REPEL INVASIONS, ETC. (DOMESTIC USES)
  - THIS IS NOT A USAF RESERVE COMPONENT FUNCTION

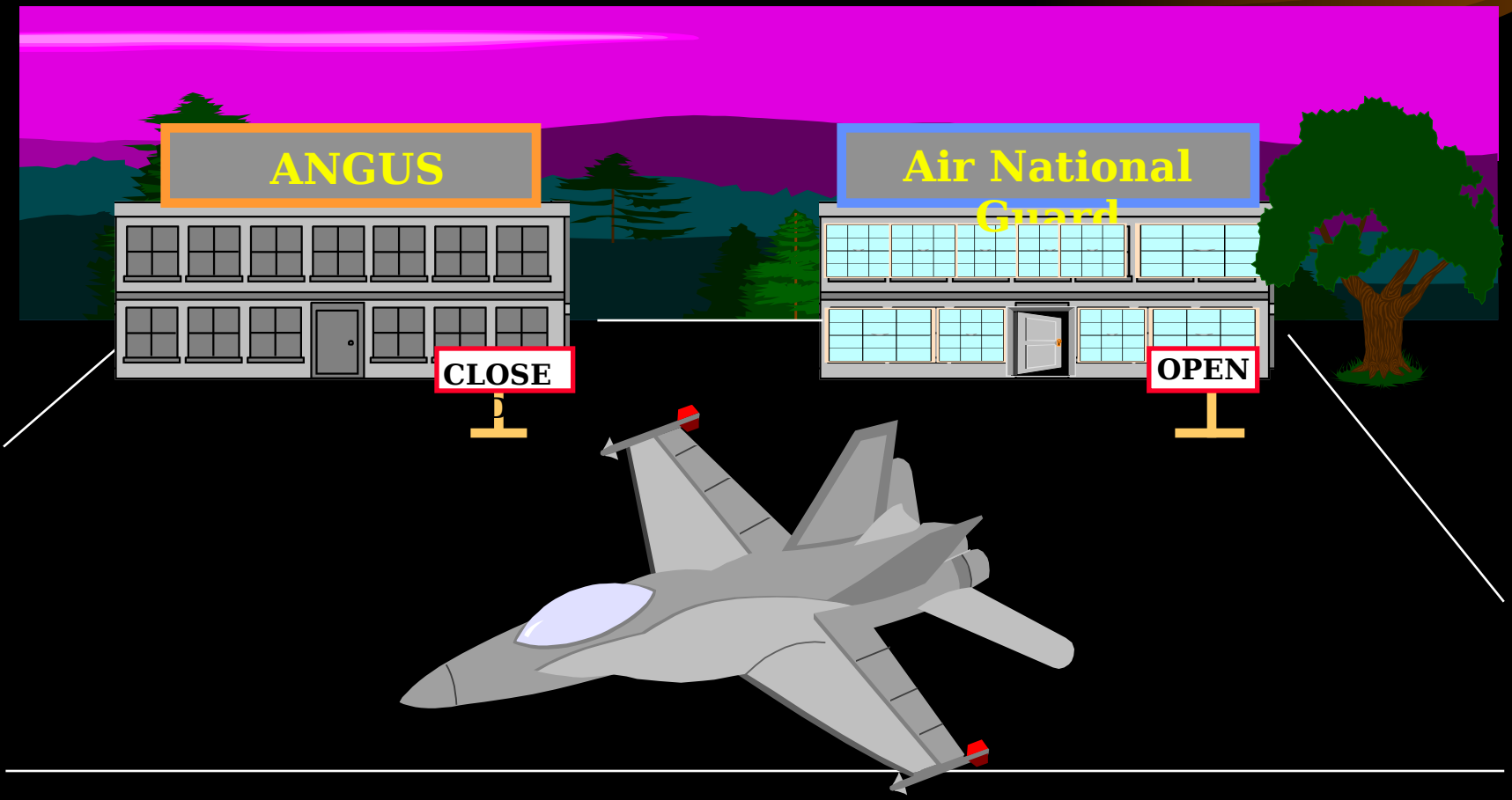
THE ANGUS

- THE “OTHER” RESERVE COMPONENT
- INTENDED TO BE USED AS A UNIT-STRUCTURED ORGANIZATION
- CONSISTS OF FEDERALLY-RECOGNIZED UNITS AND THEIR MEMBERS
- UNITS ARE GAINED DIRECTLY BY USAF MAJCOMs AND NAFs WHEN ACTIVATED OR MOBILIZED
- NO OVERARCHING FEDERAL COMMAND STRUCTURE, UNLIKE AFRC

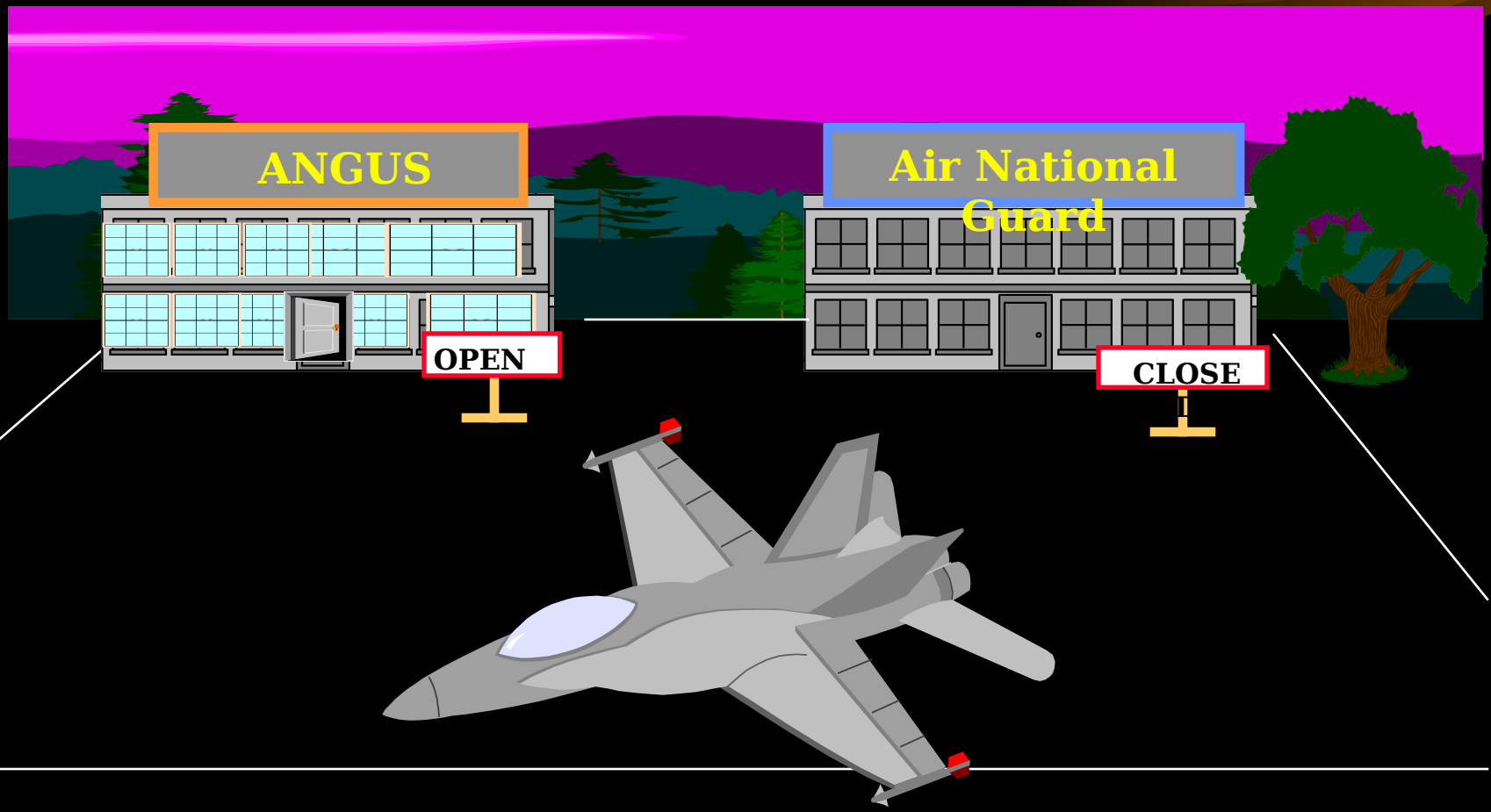
ANG VS. ANGUS

- THE ANG AND ANGUS ARE TWO COMPLETELY SEPARATE ORGANIZATIONS WITH IDENTICAL MEMBERSHIP
- MEMBERS CAN SERVE IN ONLY ONE OF THESE ORGANIZATIONS AT ANY GIVEN TIME
  - WHEN LIGHTS ARE ON IN ANG, THEY ARE OFF IN ANGUS
  - WHEN MEMBERS ARE ACTIVATED IN ONE ORGANIZATION, THEY ARE RELIEVED OF DUTY IN THE OTHER
  - STATUS IS EVERYTHING!

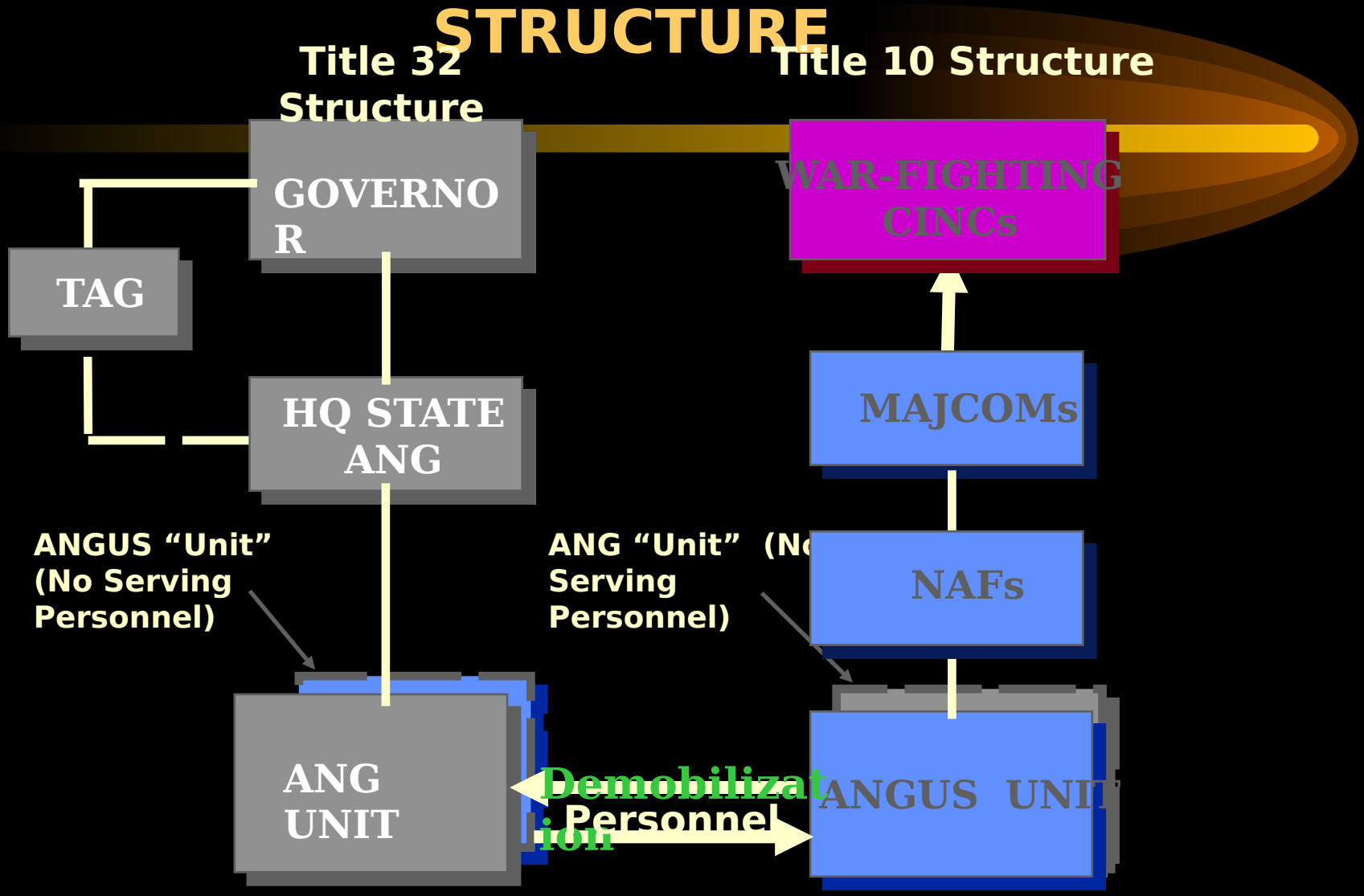
TITLE 32



TITLE 10



ANG vs. ANGUS STRUCTURE



THE ACTIVE DUTY CHAIN OF COMMAND

- OPERATIONAL CHAIN OF COMMAND (OPCON)
  - NATIONAL COMMAND AUTHORITIES (NCA)
  - COMMANDER OF COMBATANT COMMAND (CINC)
  - SUBORDINATE JOINT FORCE COMMANDER (JFC)
- ADMINISTRATIVE CHAIN OF COMMAND (ADCON)
  - NATIONAL COMMAND AUTHORITIES (NCA)
  - SECRETARY OF THE AIR FORCE (SECAF)
  - CHIEF OF STAFF OF THE AIR FORCE (CSAF)
  - MAJOR COMMAND COMMANDER (MAJCOM/CC)
  - NUMBERED AIR FORCE COMMANDER (NAF/CC)
- COMMANDER OF AIR FORCE FORCES (COMAFFOR): CINC'S ASSOCIATED MAJCOM/NAF CC

OPERATIONAL CONTROL (OPCON)

- INHERENT IN COMBATANT COMMAND
  - DOES NOT INCLUDE ADMIN, TRAINING, INTERNAL ORGANIZATION, OR DISCIPLINARY AUTHORITY
- TRANSFERRABLE COMMAND AUTHORITY
  - USUALLY EXERCISED BY NAF AS COMAFFOR FOR JOINT FORCE COMMANDER
  - MAY BE DELEGATED
- FOCUS: WARFIGHTING TASKS
  - ORGANIZE AND EMPLOY FORCES
  - ASSIGN TASKS; DESIGNATE OBJECTIVES
  - GIVE DIRECTION NECESSARY TO ACCOMPLISH MISSION
- ASSIGNED AND ATTACHED FORCES

ADMINISTRATIVE CONTROL (ADCON)

- EXERCISE OF ADMINISTRATIVE AUTHORITY OVER SUBORDINATE ORGANIZATIONS
- FOCUS: ADMINISTRATION AND SUPPORT
  - PERSONNEL MANAGEMENT
  - LOGISTICS AND RESOURCES
  - TRAINING, READINESS, AND MOBILIZATION
  - DISCIPLINE
- ASSIGNED FORCES ONLY
  - **ANGRC AND AFRC RETAIN ADCON OVER DEPLOYED FORCES (LESS THAN FULL MOBILIZATION)**

SPECIFIED ADCON

- GRANTED TO COMAFFOR TO FULFILL RESPONSIBILITY FOR MORALE, WELFARE, SAFETY, AND SECURITY OF FORCES UNDER HIS / HER COMMAND
- CORE ADCON ELEMENTS NECESSARY TO SUPPORT WARFIGHTING ACTIVITIES
  - PROPER EMPLOYMENT OF FORCES
  - NOMINATE SPECIFIC UNITS FOR USE BY JFC
  - ORGANIZE, TRAIN, EQUIP, SUSTAIN
  - FORCE PROTECTION
  - DISCIPLINE (SHARED)
- ATTACHED FORCES

JURISDICTION

- 2 PREREQUISITES
  - PROPER JURISDICTION
    - OFFENSE & PERSON
  - PROPER COMMAND AUTHORITY

JURISDICTION

- *SOLORIO V. UNITED STATES*, 483 U.S. 435 (1987)

- BASED SOLELY ON STATUS AT TIME OF OFFENSE

JURISDICTION OVER THE GUARD

- AIR NATIONAL GUARD
  - TITLE 10 vs Title 32
- R.C.M. 202
  - Prosecution under the UCMJ
- UCMJ Art 2 (a)(3) & AFI 51-201, Para. 2.8
  - Must be in Title 10 status

THE (FORMER) PROBLEM

- ANG MEMBERS DEPLOY OCONUS IN TITLE 10 STATUS
- WHEN ANG MEMBER ACTIVATED
  - BECOMES MEMBER OF ANGUS
  - RELIEVED OF DUTY WITH ANG [32 USC 325(a)]
- HE OR SHE BELONGED TO NO RECOGNIZED UNIT
  - THE ANG UNIT HAD NOT BEEN MOBILIZED
  - NO NEW ANGUS UNIT CREATED

THE "DOUBLE WHAMMY"

- COMMANDERS HAD NO COMMAND AUTHORITY OVER DEPLOYED ANGUS MEMBERS
  - COMMANDERS COMMAND ONLY RECOGNIZED UNITS
  - MEMBERS RELIEVED OF DUTY WITH ANG UNIT
  - HOME STATION COMMANDER COULD NOT COMMAND THOSE WHO WERE NO LONGER MEMBERS OF HIS / HER UNIT
  - MEMBERS NOT ASSIGNED TO ANGUS UNIT
- IF THE HOME STATION ANG COMMANDER DEPLOYED, COULD NO LONGER COMMAND HOME STATION UNIT
  - RELIEVED OF DUTY WITH ANG
  - COULD NOT COMMAND A UNIT TO WHICH HE/SHE NO LONGER BELONGED

THE PROBLEM…AND THE FIX

- THE PROBLEM: WHO WAS IN CHARGE?
  - OPCON: THEATER CINC
    - OPCON ATTACHES TO BOTH UNITS AND INDIVIDUAL MILITARY MEMBERS PRESENT IN THEATER
  - ADCON: ??? (PRE-SPECIFIED ADCON)
- THE FIX: ANGRC ESTABLISHES DETACHMENTS TO WHICH DEPLOYING MEMBERS ASSIGNED
  - MORE THAN 10 PERSONNEL
  - MORE THAN 15 DAYS
  - DET COMMANDER APPOINTED BY G-SERIES ORDER OR AF FORM 35
  - SMALL DEPLOYMENTS WITHOUT OFFICERS ATTACHED DIRECTLY TO ANGRC

DEPLOYED UNIT STRUCTURE

- NCA CREATES EXPEDITIONARY UNITS
- ANG MEMBERS ASSIGNED TO THE NEW ANGRC DETACHMENT
- ANG MEMBERS ATTACHED TO THE NEW ACTIVE DUTY EXPEDITIONARY UNIT
- COMMANDERS APPOINTED UNDER G-SERIES ORDERS OR AF FORM 35
  - DETACHMENT COMMANDER
  - EXPEDITIONARY UNIT COMMANDER

THE RESULT

- OPCON RESTS WITH JFC VIA COMAFFOR
  - AIR FORCE DOCTRINE DOCUMENT 2
- ADCON RESTS WITH ANGRC/CC
  - REMAINS IN ANGUS CHANNELS
  - CAN BE SHARED BY AGREEMENT
- COMAFFOR EXERCISES SPECIFIED ADCON
- UCMJ AUTHORITY SHARED UNDER ADCON AND SPECIFIED ADCON
- ESTABLISHES AND PRESERVES COMMAND STRUCTURE FOR BOTH AD AND RESERVE FORCES

ALL BETTER…RIGHT?

- 11 WG HAS UCMJ AUTHORITY OVER ANG PERSONNEL “SERVING ON AD IN WASHINGTON AREA”
  - IS ASSIGNMENT TO ANGRC DET “SERVICE IN THE DC AREA?”
  - DOES ANGRC HAVE UCMJ AUTHORITY?
- ANGUS / RESERVE OFFICERS CANNOT COMMAND “REGULAR USAF UNITS” UNLESS ON EAD (90 DAYS OR MORE) PER AFI 51-604
  - CAN ACTIVE DUTY MEMBERS BE ATTACHED TO ANGUS EXPEDITIONARY UNITS (NON-PSRC)?
- AFRC COMMAND OVER ATTACHED ANG UNITS?

JURISDICTION OVER RESERVISTS

- RESERVISTS
  - ACTIVE DUTY TRAINING
  - INACTIVE DUTY TRAINING

- R.C.M. 202, Persons Subject to the Jurisdiction of Courts-Martial
- AFI 51-201, Para. 2.8

UNITED STATES V. CLINE, *29 M.J. 83 (C.M.A. 1983)*

- FOR ACTIVE-DUTY JURISDICTION, STATUS, NOT DUTY HOURS, IS CONTROLLING FACTOR

- MUST LOOK AT ORDERS

RESERVISTS (A & B, etc)

- ACTIVE DUTY TOUR
- ORDERS SPECIFY PERIOD OF TOUR
- “REPORTING DATE” TO “RELEASE DATE”

RESERVISTS (A&B, etc)

- BEGINS 0001 ON “REPORTING DATE”
- ORDERS ARE “SELF-EXECUTING”
- MUST BE
  - PUBLISHED, AUTHENTICATED, RECEIVED
- DUTY HOURS, TRAVELING TIMES IRRELEVANT

RESERVISTS (A&B, etc)

- ENDS 2400 ON “RELEASE DATE”
  OR
  COMPLETION OF TRAVEL

- WHICHEVER IS FIRST!!!!!

RESERVISTS (A&B, etc)

- INACTIVE DUTY TRAINING STATUS
- UNIT TRAINING ASSEMBLIES
  - NO ORDERS
  - NO “ON/OFF DUTY” PROVISIONS
- NO MANDATORY COMPLIANCE RULES
- DUTY HOURS ARE CRITICAL
  - DRILL PERIODS (e.g., 0800-1200)
  - “SATURDAY NIGHT” PROBLEM

SCENARIO

- RESERVIST/GUARD
- DEPLOYED TO SAUDI ARABIA
- PROPERLY SUBJECT TO UCMJ
- COMMITS UCMJ VIOLATION
- DISCOVERED AFTER RETURN HOME AND TERMINATION OF FEDERAL STATUS

THE PAST

- RESERVISTS
  - TERMINATION OF FEDERAL STATUS TERMINATED JURISDICTION
- GUARD
  - TERMINATION OF TITLE 10 STATUS TERMINATED JURISDICTION
- HAD TO VOLUNTARILY ACCEPT ORDERS AGREEING TO UCMJ JURISDICTION

THE PRESENT

- ARTICLE 2(d), UCMJ
  - INVOLUNTARILY RECALLED TO A.D.
- APPLIES TO BOTH RESERVE & GUARD

THE PRESENT

- ARTICLE 3, UCMJ
  - BREAK IN SERVICE NO LONGER DEFEATS JURISDICTION
  - STATUS AT TIME OF OFFENSE CONTROLS

ACTIVE DUTY TOUR

- EXTENSION OF ACTIVE DUTY ORDERS
  - AFI 37-128 - AFI 36-8001 - CONTINUATION ORDERS

JURISDICTION ATTACHED?

- ACTION WITH “A VIEW TOWARD TRIAL”
  - APPREHENSION
  - RESTRAINT
  - PREFERRAL OF CHARGES
  - MERE INVESTIGATION NOT ENOUGH
- MUST HAVE TO EXTEND!!!!!

COMPLICATED CASES

- RESERVISTS
  - CHECK FOR NEXT ACTIVE DUTY TOUR
- OTHER CASES, INCLUDING GUARD & RESERVIST PERFORMING UTA OR IDT, RECALL TO ACTIVE DUTY

WHO CAN RECALL?

- AFI 51-201
  - GCMCA OF REGULAR COMPONENT UNIT FOR TRAINING PURPOSES
  - GCMCA OF REGULAR COMPONENT UNIT WHERE OFFENSE OCCURRED
  - GCMCA OF REGULAR COMPONENT UNIT DESIGNATED IN HOST-TENANT AGREEMENT

WHAT SENTENCE?

- GCMCA CAN RECALL IF NO RESTRICTIONS ON LIBERTY ARE SOUGHT

- IF CONFINEMENT OR RESTRICTION SOUGHT - SEC. OF A.F. MUST APPROVE RECALL

NOTICE REQUIREMENTS

- RECALL ORDER MUST BE SERVED
- ACTUAL KNOWLEDGE BY ACCUSED REQUIRED
- SERVICE ACCOMPLISHED - FAILURE TO APPEAR
- REPORT TO NCIC - DESERTER
- ARREST BY CIVILIAN AUTHORITIES AUTHORIZED

TECHNICIANS OVERSEAS

STATUS is EVERYTHING!!

WHY USE CIVILIAN STATUS?

- Cannot man missions otherwise
- Commanders cannot require military status
- Insufficient mandays
- Individual avoids LWOP, may enhance pay
- Insufficient days of military leave *
- Frequent, short- notice taskings limit use of traditional reservists

COMPLEX LEGAL ISSUES

- Diverse treaties, SOFAs, agreements with some nations - others, nothing
- Internal laws vary greatly
- Law of Armed Conflict designed for military status
- Unexpected changes

ADVANTAGES OF MILITARY STATUS

- Fully covered by LOAC and SOFAs as combatants and members of the force
- Ease of entry into foreign country
- Subject to Uniform Code of Military Justice
  - Waiver of foreign criminal jurisdiction
  - Commanders have full military authority
- Arming of aircrew members

ADVANTAGES CONTINUED

- On duty 24 hours a day
- LOD for medical and continuation pay
- Full military benefits overseas
- Customs, taxes, duty-free benefits

CIVILIAN STATUS ???

- No chain of command, discipline unlikely
- Fully subject to local laws for offenses
  - Immigration, customs, taxes, arming
- Not in line of duty for injury or death
- After the fact military orders questionable
- Private life and medical insurance policy exclusions

SOLUTIONS

- AF Chief of Staff Policy Letter, 1995
- New legislation : 5 USC 6323 amended
  - Many issues unresolved
- Amend Technician Agreement and statute to require use of military status overseas
- Green card all technicians
- Educate, brief issues, maintain status quo

QUESTIONS?